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ABSTRACT

Researchers who have attempted to study the functioning of the jury in the United States have been hampered by the absolute confidentiality of jury deliberations. Research methodologies have tried to circumvent this difficulty by using simulated juries, and have focused largely on the influence of the social status of jurors during deliberations. More recent research, however, suggests that jurors seldom change opinions during deliberations, so future study of the influence of status on verdict should consider the status attributes which predispose jurors to particular verdicts. Although more recent studies have been methodologically superior in the accurate reproduction of courtroom atmosphere, even greater accuracy can be attained by use of the participant/observer method, which is recommended in view of the right of the researcher-as-juror to publish about the trial experience. This method could yield the first case study of the United States jury. Further research is suggested on the effects on jurors' decision making of such factors as jurors' training and their listening comprehension, stress, friendship clique formation, jurors' perceptions of defendants' worth and jurors' taking into account of extralegal considerations. Research may prove to be a catalyst for reform in the jury selection process. (DF)

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"A Methodological Review of Jury Research in the United States"

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Precisely what happens in a jury room has been of interest to psychologists, (Hovland, Kelley and Janis 1957; Broeder 1959; Kaplan and Simon 1972) to sociologists, (Stodtbeck 1962; Simon 1967; Erlanger 1970) to lawyers, (James 1951; Kalven and Zeisel 1966) to social psychologists, (Guetzkow and Collins 1964; Cartwright and Zanders 1968) and to communication researchers, (Fest and Harnack 1968; Stattler and Miller 1968; Barlund 1969; Cathcart and Samovar 1970). In particular, speech communication journals such as the Journal of Communication (Summer 1974) and The Journal of the American Forensic Association (Winter 1976) have focused special issues on the close relationship between communication and the judicial process. "The increasing number of studies in legal communication is especially timely. It is difficult to name a period in American history when more attention has been focused on the judicial process and communication." (Welch 1976)

Unfortunately for research purposes, jury deliberations are legally protected from observation. As part of the Chicago Jury Project beginning in 1954, Kalvin and Zeisel did obtain permission to record jurors during deliberations in five civil cases in the federal district court in Wichita, Kansas. Their intent was to validate their research methodology for the entire Chicago Jury

Project by illustrating that post-trial interviews with jurors permit reconstruction of the events in a jury room. By the Summer of 1955, they were faced with: public censure by the Attorney General of the United States, a special hearing before the Sub-Committee on Internal Security of the Senate Judiciary Committee, and national news coverage. This Chicago Jury Project eventually resulted in the publication by Kalvin and Zeisel of The American Jury 1966, still considered to be the definitive work in empirical legal research. Their data was collected through post-trial questionnaires returned from 555 judges serving on 3,576 criminal jury trials and data collected from post-trial interviews with jurors.

In the preface to The American Jury the authors state, "None of the Wichita data is included in this book, nor will it be included in future books. We note the episode here simply to make clear to that man who would say, 'That's all very interesting, professor, but did you ever hear a real jury deliberate?' that the answer is yes, and to point out that one of the distinctions of the jury study is that it is a research project that has a Purple Heart." Concerning their methodology then, Kalvin and Zeisel conclude, "...modern social science research on vital problems and living institutions will always be confronted with large practical difficulties;

the pure canons of methodology can seldom be followed. In these situations it is important that the researcher into the problems of society be prudent, by being prepared to make some concessions to reality and some compromises with ideal methodology.

Throughout the remainder of the analysis we shall proceed on the proposition that what is true for the sample of 3,576 criminal jury trials is true for the universe of criminal jury trials in the United States."

It is interesting to note that although jury members are cautioned not to discuss their deliberations, legally they can grant post-trial interviews and can publish books about their jury experience. However, such data is usually not used as the basis for an appeal.

> As long ago as 1915 the Supreme Court said it would be wrong for a reviewing court to consider why a jury did what it did or how it reached its verdict. The Court said judges should not even listen to evidence, obtained from jurors themselves after a verdict, that they had used an improper formula to arrive at a sum of damages or traded off their beliefs on one criminal count for agreement on another. The Court explained: 'If evidence thus secured could be thus used, the result would be to make what was intended to be a private deliberation the constant subject of public investigation - to the destruction of all frankness and freedom of discussion.'
>
> On that theory, courts have often said that they will not look into the jurors' 'state of mind' as they reached a verdict. Jurors in publicized cases occasionally tell newspaper reporters afterward that they did not really believe the evidence, but there is not much counsel can do with such

> tidbits on appeal. In the Mandel case one of the jurors told the press that he had gone along with the others despite feelings that 'all the parties were innocent.' But the juror said conflicting things to other interviewers, and in any event appelate courts are not likely to give any weight to such comments. The formal product of the jury's deliberations, its verdict, must speak for itself. (Lewis 1977)

Researchers who have tried to study the American jury have been legally thwarted by the absolute confidentiality of the deliberations of the jury. "A persuasive case can be made that this careful preservation of the sanctity of the events of the jury room has contributed to the independence of the trial jury, but at the same time we have been left almost totally ignorant of how juries function." (Anapol 1974)

Rather than remaining ignorant, several researchers decided to use simulated juries. In 1957, Strodtbeck, James, and Hawkins conducted a simulated jury study investigating the effects of a juror's social status during jury deliberations. For the purpose of this study, status was defined by occupation. The participants were jurors drawn by lot from the regular jury pools of the Chicago and St. Louis courts. They listened to a recorded trial, deliberated, and returned their verdict - all under the customary discipline of court bailiffs. The jury deliberations were recorded, fully transcribed, and scored in terms of interaction process categories.

The results of the study yielded that, "...men, in

contrast with women, and persons of higher in contrast with lower status occupations have higher participation, influence, satisfaction and perceived competence for the jury task." Strodtbeck, et.al., hypothesized that status differences became present in a jury room "...because the varied requirements of the deliberation re-create within the jury the need for the differential experiences associated with status."

Still concerned with the status variable in juries and based on sixty-nine experimental jury deliberations, Strodtbeck and Hook reported in 1961 that jurors of higher status occupations were more likely selected as foreman. The index values relating to frequency of choice for foreman by occupation were: "Proprietor, 1.95; Clerical 0.81; Skilled 0.92; and Labor, 0.63. Thus, while the jury frequently gave as its rationale the explanation, 'you take it, you are at the end of the table,' the evidence strongly suggests that they had scanned both ends of the table before making this decision." In addition, the role requirement of being foreman increased relative participation of the incumbent until he accounted for approximately 25 per cent of the total interaction process acts.

Simulated jury studies continued. A study by Landy and Aronson (1969) is representative of the methodology used in jury studies during the late sixties. They con-

ducted two experimental studies in judicial judgment designed to determine the influence of the character of the criminal and that of his victim on the decisions of simulated jurors.

> ...subjects read a standardized description of a crime of negligent automobile homocide. In both experiments, the victim of the crime was presented to approximately one-half of the subjects as an unattractive person (Unattractive Victim condition) and to the other half of the subjects as an attractive person (Attractive Victim condition). In Experiment II the character of the defendant was also varied: he was described to some subjects as an attractive person, to some as an unattractive person, and to others as a 'neutral' person. The actual circumstances of the crime were, of course, identical for all subjects. The subjects were requested to sentence the defendant to a specific number of years of imprisonment according to their own personal judgment.
>
> As predicted, the results of both Experiment I and II showed that subjects in the Attractive Victim conditions tended to sentence the defendant to a greater number of years of imprisonment than subjects in the Unattractive Victom conditions. In Experiment II, subjects in the Unattractive Defendant condition sentenced the defendant more severely than subjects in either the Attractive or Neutral Defendant conditions.

There are several methodological problems with this study: (1) While the results of these laboratory experiments may have implications for actual jury trials, there is a problem with the generalizability of the findings. The subjects were college students and regardless of how seriously they took their task, they were not actual jurors sitting in judgment at a real trial. (2) The subjects read the cases. This does not simulate jury procedure. In fact, jurors are not usually allowed to take notes.

(Subjects were also asked to read written accounts of a crime in research by Kaplan and Simon (1972), Friend and Vinson (1974), and Jacobson and Berger (1974).) (3) The descriptions of the attractive and unattractive victim were written and therefore the lack of visual perception of a defendant does not simulate an actual trial. (4) The description of the unattractive defendant read in part: "Sanders has two misdemeanors on his criminal record in the past five years - breaking and entering and a drug violation. His traffic record shows three tickets in the same space of time." It is possible that a real jury would hear testimony regarding his traffic tickets in a negligent automobile homocide case but it is doubtful if his lawyer would have allowed testimony about the two misdemeanors as they are not pertinent to this particular charge. (5) The subject-jurors were asked to read a case and then render a decision independently of the other jurors. This condition hardly simulates a real jury.

In 1973, Nemeth and Sosis replicated the Landy and Aronson (1969) study. Unfortunately, they also automatically duplicated the problems with the study. Besides the original variables, Nemeth and Sosis manipulated the race of the defendant (black or white) as well as the cultural backgrounds of the two juries. Their findings supported those of Landy and Aronson. In addition, they

concluded that (1) the race of the defendant was not significant, and (2) the cultural characteristics of jurors were found to have a marked effect on the severity of punishment. Jurors from working class backgrounds (Polish, Irish, Slavic and politically conservative) gave significantly higher penalties to the defendant regardless of the attractive or unattractive characteristic than did jurors from upper-middle class backgrounds (politically liberal and activists).

An additional note of caution should be added in interpreting these results especially with regard to race. The jurors were all white. Nemeth and Sosic themselves point out that, "...in an abstract situation such as this one, white subjects are reluctant to ascribe negative stereotyped evaluations to blacks and, as such, 'bend over backwards' in this regard."

In 1974, Izzett and Leginski replicated the Landy and Aronson (1969) study focusing on whether variation in the personal characteristics of the defendant would continue to influence the sentences returned by jurors after they had been given the opportunity to discuss the case.

> Results indicate that (a) prior to group discussion S's in the unattractive defendant treatment sentenced the defendant to a significantly longer prison term than S's in the attractive defendant treatment; (b) after group discussion there was a significant shift toward leniency in the unattractive defendant treatment, while no significant change

> in the attractive defendant treatment; and (c) the post-discussion sentences of S's in the unattractive defendant treatment did not significantly differ from those in the attractive defendant treatment.

Jury studies then have focused largely on the influence of the social status of jurors during deliberations. However the importance of these findings is greatly diminished by the findings of Kalven and Zeisel (1966). Along with other researchers (Weld and Danzig 1940; Simon 1967) they have reported that, "...most jurors do not change their opinions in the jury room, and the majority of the first ballot eventually wins out in about 90% of all cases. Therefore, the decision is in effect made before the jury enters the jury room." As Kalven and Zeisel stated, "... deliberations do not so much decide the case as bring about consensus."

In a comprehensive review of jury research in America, Erlanger (1970) suggested that, "Future study of the influence of status on the verdict should move away from the jury room and consider the status attributes which predispose jurors to particular verdicts." Experienced trial lawyers pride themselves on their ability to select the proper jury during voir dire. Obviously then they have developed some stereotypes about who makes a proper juror. "They feel that persons of Latin descent are emotional, while German, British, and Scandinavians are

conservative and will support the prosecution more than the defense. Blacks, Italians, Irishmen, Jews, Frenchmen, and Spaniards are expected to support the defense more than the prosecution. Waitresses, bartenders, artists, actors, social scientists, and persons with more experience 'in the world' are thought to make better jurors than engineers and accountants." (Tate, et.al., 1974)

Additional support for this stereotyping of jurors can be based on attorney behavior in the "Harrisburg Conspiracy Trial". According to Shaver (1973), the ...defense team took as many notes as possible on the clothing styles of the prospective jurors. Appearance was one factor in the decision of whether to challenge or accept the juror."

William J. Bryan, Jr., an attorney and physician who has helped select juries for Melvin Belli and F. Lee Bailey, stated in early October 1973 that, "...for all intents and purposes the Watergate coverup case will have been decided with the selection of the final juror...." (Bryan, 1974).

Research may well become the catalyst for reform of our jury selection process. "Sociologist Amital Etzioni (1974) is concerned about the potential threat to a fair trial posed by the availability of sophisticated social science techniques. He believes that a team of social

scientists can exercise excessive control over a jury and allow lawyers to pick juries partial to their cause. Since states do not provide district attorneys with such teams, Etzioni warns that defendants have the edge - and the wealthier the defendant, the greater the edge."

In the past three years, the interest in jury research has esculated and so have the number of published studies. Most researchers (Anapol 1973, 1974; Miller 1974) have taken the time to methodically review previous jury studies and thus avoid obvious methodological problems. Their research designs evidence a marked improvement over those of earlier studies. Other researchers (Arnold 1976) have published jury research that is more reflective of the sixties. At least part of the burden of maintaining the quality of published legally oriented research must rest with the editors of our scholarly journals. Editors of communication journals should consult with knowledgeable editors of law journals to insure that the body of knowledge about juries is advancing not simply being published.

Convinced of the need for ecological validity in legal communication research, Anapol (1973) designed a descriptive field study to duplicate as closely as possible a real trial situation.

Utilizing transcripts he recreated on videotape a civil trial with a running time of about five hours. The

plaintiff was an iron worker who was injured when the steel bar joist roofing base he was working on collapsed sending him twenty feet to the ground. This fall resulted in severe back and spinal injuries. One of the original lawyers and several original witnesses participated in the study. A local judge presided, experienced trial lawyers participated, and other participants were closely matched to those in the original trial. For example, in the place of an engineer who originally testified, a professor of engineering was substituted. An authentic courtroom set was constructed and the proceedings were videotaped.

Most of the subjects were recruited from the general public and were currently or had served on a jury within the past four years. Separately, undergraduates were also used as subjects in order to study the effects of training in decision making on jury deliberations. All subjects were told that they were taking part in a jury study.

The study yielded twelve hours of simulated juries in deliberations. Anapol noted that, "...these tapes represent the best sample of a realistic jury in action presently available." The results of this study are as follows: (1) While the original trial was bifurcated, the videotaped trial was not. Interestingly enough each jury deliberated in a bifurcated manner, i.e., juries first decided liability and then awarded damages.

(Perhaps formal bifurcation of trials may be unnecessary.)[13] (2) Juries seem to have fairly uniform ways of dealing with holdouts. (3) Juries do pay careful attention to the facts. They are surprisingly logical and rational but emotional ploys of the attorneys do influence the jury. (4) The six man jury seemed freerer from repetition and wasted motion than the twelve man jury. (5) Jurors using mimeographed copies of the judge's instructions did not greatly affect the outcome of the trial in which this variable was tested. It did appear to create a more informed, better functioning jury. (6) Note taking by the jury (usually considered illegal) produced the largest monetary award. (7) Manipulation of attorney credibility did not change any juries decision - all awarded for the plaintiff. (8) The case of the plaintiff, the exhibits, expert witnesses, and eyewitnesses appear to be the top three deciding factors to each jury after deliberations, but not always before deliberation.

As Anapol demonstrated, it is possible to set up a realistic courtroom atmosphere for real jurors observing a trial. Miller, et.al., 1974 utilized as subjects fifty-two jurors from the Genesee County Circuit Court jury panel on their final day of jury service. A 1968 traffic accident case was portrayed by professional actors and actresses with the exception of the judge and court bailiff

who were assigned to that Court. While the first group of jurors watched the trial, it was simultaneously videotaped. The researchers wanted to find out if individual juror responses were different when watching a videotaped trial or watching a live trial. They concluded: "When compared to their counterparts who heard a live trial, jurors who viewed the videotaped trial arrived at similar judgments about negligence and amount of award, had similar perceptions of the contesting attorneys, retained as much of the trial-related information, and reported similar levels of interest and motivation toward the task of serving as jurors."

Miller, et.al., also commented on the research design. "...the believability and realism of our methodology bolsters our confidence in our findings; unlike most previous research we used actual jurors who viewed a complete trial in a courtroom setting. That these jurors responded similarly in both conditions (live versus videotaped) bodes well for the communicative comparability of the two modes of presentation."

It is important to note that the research here focuses on the effects of the videotape medium on individual jurors responses prior to deliberation. The researchers themselves point out that, "...many things can occur in the jury room to modify these initial perceptions and judgments."

Based on additional research of his own in 1974 and familiar with the work of Miller, et.al., published that same year, Anapol has concluded:

> (1)...that in jury research the use of a videotaped trial when compared with the use of a written version of the same trial would result in measurably different outcomes and that the videotaped version would more closely reflect the outcome of the original trial.
>
> (2)...that in jury research when decisions made by simulated juries engaging in deliberations were compared with decisions made by individual subjects the outcomes would be measurably different and that the decisions resulting from the deliberations of the jurors would more closely reflect the outcome of the original trial.
>
> (3)...that the farther removed a jury research design is from the reality of a jury seeing a trial and reaching a consensus verdict by deliberation, the farther removed the outcome will be from the original trial situation.

Among the most recent jury simulation research is Arnold's 1976 study: "Membership Satisfaction and Decision Making in Six Member and Twelve Member Simulated Juries." The title of the article sounds potentially relevant to jury research in light of the fact that: (1) The Chicago Jury Project statistics suggested that twelve jurors rarely produced a decision which differed from what six similarly chosen jurors produced. (2) Communication research has demonstrated that the maximum size of decision making groups should be from five to seven members. (Erickson and Phillips 1971). (3) In June 1973, the Supreme Court upheld an earlier (1970) decision and ruled

that six-member juries did not violate the Constitutional guarantee of trial by jury. (Colgrove V. Battin, 93 S. Ct. 2448)

However Arnold's subjects were students randomly assigned on the basis of sex to six-member or twelve member groups. They were given a printed description of the facts of a civil case. The subjects read the printed material, it was collected, and discussion insued. After the group indicated that they had reached a decision, a verdict form was filled out with regard to negligence and amount of damages. Group members were given a questionnaire (based on the Daley/Weidman MSI) designed to measure satisfaction with: (1) individual performance, (2) group process, and (3) group decision.

The results of this study indicated that group size did not affect member satisfaction. A secondary finding was that while the verdict remained the same for both sized juries, the mean financial reward given by six-member juries was statistically significantly larger than that of twelve member juries.

There are several problems with this study. Those recognized by the author include: (1) The subjects were college students. (2) Decisions were reached within the confines of a fifty minute class period.

In his section on "Implications for Future Research" Arnold observes that: (3) "In this study a court case was summarized in a written copy which was read by the subjects.... The case was obviously not presented as it would have been in a courtroom, with verbal and physical factors present. Studies should be conducted centering on these variables of physical appearance and verbal presentation." The author footnotes the Anapol 1974, study. He could have replicated it. In addition he does not cite the Miller et.al., 1974 study. He should have been cognizant of its implications for authenticity in jury research.

(4) "Groups of nearly every size should be given the same task and analysis undertaken from there. Obviously the results are now conflicting." The author should have followed his own suggestion by varying the size of the juries and by employing the same task (court case). Perhaps he should have employed the same task used by Landy and Aronson 1969 or Anapol 1973.

Beyond these problems alluded to by Arnold, there is another problem with this study as it relates to jury research. Is it important that jury members feel satisfied (as measured by Arnold's questionnaire) with themselves, other jurors, or the verdict? Jury duty may not be a satisfying experience, just a duty to be performed.

The more relevant question would be: Does juror dissatisfaction with themselves or other jurors affect group process, length of deliberation, or the verdict?

There are several areas of research that scholars have not studied that would have practical ramifications for reform in the American Jury:

(1) The specific effects of the utilization of videotape in our courts could be a fruitful area of investigation for speech communication researchers. Videotape might be useful in coping with crowded court agendas, illusive witnesses, deleting legally inadmissable materials prior to viewing by jurors, etc. However there are two central constitutional issues to be addressed: (a) The Sixth Amendment right of the accused to confront witnesses. "The key issue is whether the video medium provides the right of confrontation or whether physical face-to-face confrontation at trial is required." (Kosky, 1975). (b) The accused Sixth Amendment right to counsel. The effectiveness of the accused counsel could be questioned when cross-examination and opening and closing arguments would be videotaped for a jury which counsel, "...cannot see or know the composition of." (Kosky, 1975). Certainly a viable starting point for researchers interested in this question would be the Miller, et.al., 1974 research.

(2) The effects of training on juror's decision making deserves further research. Excerpts from post-trial interviews with the Mandel jurors substantiates this point.

> The first week had been chaos. The seven men and five women were overwhelmed by the sheer mass of evidence, the complexity of the legal terms, their own inexperience. They were angry, confused, and almost too shy to ask for help.
>
> In the end it was the judge's words that made them go back and for the first time review each piece of evidence. (Babcock and Meyers 1977)

A suggested starting point for researchers wanting to pursue this question would be an article by Norman R. Maier, "Effects of Training on Decision-Making," 1972.

(3) The listening comprehension of jurors should be studied in light of the research on listening in speech communication (Weaver 1972). For example, in 1970, Forston studied the listening comprehension of jurors. His study had ecological validity because it involved actual judge's instructions. He compared six-man juries listening comprehension to individual juror responses. He found that, "...juries comprehend more collectively than individually and that the level of comprehension is higher than listening theorists would predict ranging up to 93.3% for some civil juries."

Anapol (1974) commented that this study was well done precisely because the researcher was fully aware of the constraints of the legal situation.

(4) The effects of stress on jurors is deserving of research. The Mandel trial took nearly three months and produced 11,588 pages of testimony. The twelve jurors deliberated for 113 hours over a three week period - one of the longest deliberations in a Federal trial.

> Theodore T. Brown, 27, of Baltimore....said the 2-1/2 months of being sequestered left him feeling 'like a prisoner.'
>
> It got to a point where I couldn't sleep at night.... Not being able to look out the window on the bus, having Marshals listening in on my phone calls, not being able to watch TV.
>
> Stevarlon A. Bross repeatedly dreamed that one of the Marshals turned into a witch and came through an adjoining door to my room after me.... In another dream I could hear clanging noises on the balcony and I would think someone was throwing a rope up on the balcony trying to come after me.
>
> Fitful sleep punctuated by bad dreams was not unique to 19 year old Bross....who became ill twice during the proceedings....

Stress might also have been inflicted on the sequestered jurors when they were taken home once a week to get clean clothes. Deputy U.S. Marshals usually do not monitor conversations in the home between the family members. For example, if a sequestered juror enters the bedroom with his wife to get clean clothes and they shut the door behind them, it is unlikely that a Marshal would insist on being present.

> During their three-month sequestration, Brown said he gained 15 to 20 pounds. But the long

separation had an opposite effect on Bill Hogg, Brook's boyfriend, who lost 20 pounds.

> 'I couldn't accept it,' he said. 'I was hurt, angry at her because she didn't try to get out of it (being a jury member)...I missed her...I just couldn't eat.' (Meyers 1977)

Stress could also be inflicted on the jurors by the trial judge. Consider what Judge Taybr said to the Mandel jurors after they sent him a note saying they had been unable to agree even on the existence of a scheme to defraud: "...after full deliberation and consideration of all the evidence it is your duty to agree upon a verdict, if you can do so without violating your individual judgment and conscience."

He went on to say, "For the parties that are involved in this lawsuit, the government and the defendants, this case is an important one and its presentation to you has involved expense and expenditure of time by both the government and defendants. Now, Mr. Foreman and members of the jury, please retire further and deliberate." (Babcock and Meyers 1977)

Although Judge Taylor's wording was less forceful than the Allen charge, the question is: Does his charge plus his offer to give further instructions amount to coercion? An interesting research question would be: What is the effect of coercion by a trial judge on jury deliberation?

Another source of stress for a sequestered juror could be coping with an unmanageable amount of notoriety. "Lambson, the juror who admitted he had doubts about Mandel's guilt to the very end, said 'I think of this case as proof that the American system has merits. Here I am a little two-bit man joining a group of 12 people to make a decision on the govenor. All my life I've never had any contact with these people (the defendants), like this.'" (Babcock and Meyers 1977)

Deputy U.S. Marshals interviewed indicated that frequently members of sequestered juries unaccustomed to instant fame have trouble coping with bodyguards, the press, etc. "they'll talk about that trial (Hanafi Muslim) the rest of their lives."

(5) Friendship clique formation among sequestered jurors would be an area of research for the small group theorist. The Deputy U.S. Marshals interviewed each cited an instance of sub-group formation within the juries. According to one Marshal, "Some of them eat and go right to their room while others are real sociable." The jurors in the Mandel trial,

> "...talked of the friendships they formed among themselves during the ordeal, and they now plan to meet at an undisclosed location soon for a reunion picnic.
>
> On weekends, the jurors were bused to such areas of interest as Gettysburg and nearby Pennsyl-

vania Dutch country. On one occasion, the bus driver took them to his home for a picnic.

> Boyfriends, husbands and birth control were frequent topics of conversation among the jurors. The group became so close-knit that when one juror and one alternate were excused during the trial because of illness, the rest felt their 'world crumbling,'....
>
> 'If we thought that anyone was down in the dumps, we'd do anything to get that person out of it,'....

Certainly a sociogram on a sequestered jury would be most interesting.

'6) Equity theory might provide a framework for explaining some irrelevant factors which affect juror's decisions. This theory views human interaction as a continual exchange and trading of rewards and punishments. "Equity considerations would also seem to apply to courtroom decision-making. Conceptually, jurors enter into a relationship with the defendant in which the defendant is evaluated on the basis of his worth, whether or not this is relevant to charges against the defendant." (Savitsky and Sims 1974)

In an empirical study of the effects of the emotional states of a delinquent, Savitsky and Sims (1974) hypothesized that, "...a sad and distressed offender would be seen as self-punitive and that this would result in more favorable evaluations of him; he would be establishing equity via the payment of psychological discomfort. On

the other hand, an offender who presented himself as happy would not be seen as offering restitution and would therefore be evaluated more poorly. Further, offenders who behaved angrily would also receive negative evaluations, since their anger would be perceived as indicating further demands in an already inequitable situation." Their hypothesis was confirmed.

Further research might study the perceived emotional state of the defendant on jurors (1) prior to deliberation and (2) if this entered significantly into jury deliberation. A preliminary study of this nature could focus on content analysis during deliberations.

Certainly we need to study the relationship between a defendant's mode of self-presentation and its impact on the jury. For example, Mandel's demeanor in the courtroom was generally described as confidant. This manner of self-presentation may well have worked against him while his illness may have had a psychologically positive impact on the jurors. The anger of the Hanafi Muslim defendants might have had an adverse effect during their trial.

(7) Jury members take into account extra-legal considerations when reaching a verdict. Kalvin and Zeisel (1966) documented this phenomenon and termed it "jury legislation". They defined it as ...the jury's rational modification of the law to make it conform to community

views of what the law ought to be. Jury legislation (on jury sentiments on the law) is a factor in fully 50% of the disagreements between judge and jury, making it the most important factor (except for evidence disputes) in the explanation of the divergence."

Therefore much of the disagreement between judge and jury is due to the jury's giving recognition to values which fall outside of the law. For example, one Mandel juror stated, "I felt sorry for Mandel the whole time. Because of his divorce he was in a position to need a lot of money." (Babcock and Meyers 1977) In any event, further research should yield new insights into extra-legal considerations made by jurors.

It is the opinion of this writer that future research on the American jury should utilize the participant-observer research methodology. Certainly there is ample precedent in the literature: "The participant-observer technique has been used with boys' gangs (Whyte, 1943), on psychiatric wards (Stanton and Schwartz, 1954; Banks, 1956), with discussion groups (Carr, 1929; Koslin et.al., 1968), and in studies of rumor transmission (Back et.al., 1950)." (Hare, 1976)

Given a specific research hypothesis, a well thought out design, specific category systems, and a quantification and qualification of the data observed, a person

knowledgeable in small group theory could make a significant contribution as a participant-observer on a jury. This researcher could legally publish the data collected. In fact, this suggestion should yield the first case study of the American jury.

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